

Office of Personnel Management

§ 575.306

§ 575.303 Eligible categories of employees.

Except as provided in § 575.304, an agency may pay a retention incentive to a current employee who holds—

(a) A General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority);

(b) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(c) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(d) A position as a law enforcement officer, as defined in 5 CFR 550.103;

(e) A position under the Executive Schedule paid under 5 U.S.C. 5311-5317 or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(f) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3); or

(g) Any other position in a category for which payment of retention incentives has been approved by OPM at the request of the head of an executive agency.

§ 575.304 Ineligible categories of employees.

An agency may not pay a retention incentive to an employee in—

(a) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(b) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(c) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(d) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(1) To which an individual is appointed by the President without the advice and consent of the Senate;

(2) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(3) In which the employee is expected to receive an appointment as the head of an agency.

§ 575.305 Applicability to employees.

(a) An agency may pay a retention incentive to an individual employee under the conditions prescribed in this subpart when the agency determines that—

(1) The unusually high or unique qualifications (*i.e.*, competencies) of the employee or a special need of the agency for the employee's services makes it essential to retain the employee; and

(2) The employee would be likely to leave the Federal service in the absence of a retention incentive.

(b) Except as provided in paragraph (c) of this section, an agency may pay a retention incentive to a group or category of employees under the conditions prescribed in this subpart when the agency determines that—

(1) The unusually high or unique qualifications (*i.e.*, competencies) of the group or category of employees or a special need of the agency for the employees' services makes it essential to retain the employees in that group or category; and

(2) There is a high risk that a significant number of the employees in the group would be likely to leave the Federal service in the absence of a retention incentive.

(c) An agency may not include in a group retention incentive authorization an employee covered by § 575.303(b), (c), (e) or those in similar categories of positions approved by OPM to receive retention incentives under § 575.303(g).

(d) A retention incentive may be paid only when the employee's rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) is at least "Fully Successful" or equivalent.

§ 575.306 Authorizing a retention incentive.

(a) *Authority of authorized agency official.* An authorized agency official retains sole and exclusive discretion, subject only to OPM review and oversight, to—

(1) Determine when the unusually high or unique qualifications (*i.e.*, competencies) of an employee or a special need of the agency for the employee's services makes it essential to retain the employee and when the employee would be likely to leave the Federal service in the absence of a retention incentive;

(2) Determine when a group or category of employees has unusually high or unique qualifications (*i.e.*, competencies) or when an agency has a special need for the employees' services that makes it essential to retain the employees in that group or category and when there is a high risk that a significant number of employees in the group would be likely to leave the Federal service in the absence of a retention incentive;

(3) Approve a retention incentive for an employee (or group or category of employees, except as prohibited by § 575.305(c)) in a position (or positions) listed in § 575.303;

(4) Establish the criteria for determining the amount of a retention incentive and the length of a service period under §§ 575.309 and 575.310, respectively;

(5) Request a waiver from OPM of the limitation on the maximum amount of a retention incentive for an employee (or group or category of employees) under § 575.309(e); and

(6) Establish the criteria for terminating a service agreement or retention incentive payments under § 575.311.

(b) *Factors for authorizing a retention incentive for an individual employee.* An agency must consider the following factors, as applicable to the case at hand, in determining whether the unusually high or unique qualifications of an employee or a special need of the agency for an employee's services makes it essential to retain the employee and that the employee would be likely to leave the Federal service in the absence of a retention incentive:

(1) Employment trends and labor market factors such as the availability and quality of candidates in the labor market possessing the competencies required for the position and who, with minimal training, cost, or disruption of service to the public, could perform the full range of duties and responsibilities

of the employee's position at the level performed by the employee;

(2) The success of recent efforts to recruit candidates and retain employees with competencies similar to those possessed by the employee for positions similar to the position held by the employee;

(3) Special or unique competencies required for the position;

(4) Agency efforts to use non-pay authorities to help retain the employee instead of or in addition to a retention incentive, such as special training and work scheduling flexibilities or improving working conditions;

(5) The desirability of the duties, work or organizational environment, or geographic location of the position;

(6) The extent to which the employee's departure would affect the agency's ability to carry out an activity, perform a function, or complete a project that the agency deems essential to its mission;

(7) The salaries typically paid outside the Federal Government; and

(8) Other supporting factors.

(c) *Factors for authorizing a retention incentive for a group or category of employees.* (1) An agency must consider the factors in paragraph (b) of this section as they relate to determining whether a group or category of employees—

(i) Has unusually high or unique qualifications (*i.e.*, competencies) or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category; and

(ii) That it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category would be likely to leave the Federal service in the absence of a retention incentive.

(2) An agency must narrowly define a targeted category of employees using factors that relate to the conditions described in paragraph (c)(1) of this section. Factors that may be appropriate include the following: occupational series, grade level, distinctive job duties, unique competencies required for the position, assignment to a special project, minimum agency service requirements, organization or team designation, geographic location, and

required rating of record. (While a rating of record of higher than the “Fully Successful” rating of record required by § 575.305(d) may be a factor used in defining the targeted category, a rating of record by itself is not sufficient to justify a retention incentive. A rating of record may function as a supporting factor in authorizing an incentive or setting the incentive rate only to the extent it directly relates to the conditions in paragraph (d) of this section.)

(d) An agency must document the determinations required under paragraphs (b) and (c) of this section as required by § 575.308.

§ 575.307 Agency retention incentive plan and approval levels.

(a) Before paying retention incentives under this subpart, an agency must establish a retention incentive plan. This plan must include the following elements:

(1) The designation of officials with authority to review and approve payment of retention incentives, subject to paragraph (b) of this section;

(2) The categories of employees who are prohibited from receiving retention incentives;

(3) Required documentation for determining that an employee would be likely to leave the Federal service;

(4) Any requirements for determining the amount of a retention incentive;

(5) The payment methods that may be authorized;

(6) Requirements governing service agreements which, at a minimum, must include—

(i) The criteria for determining the length of a service period under a service agreement;

(ii) The conditions for terminating a service agreement;

(iii) The obligations of the agency and the employee, as applicable, if an agency terminates a service agreement; and

(iv) The conditions for terminating retention incentive payments when no service agreement is required (see § 575.310(f)); and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action and fulfill the requirements of §§ 575.312 and 575.313.

(b)(1) Except as provided in paragraph (b)(2) of this section, an authorized agency official who is at least one level higher than the employee’s (or group of employees’) supervisor must review and approve each determination to pay a retention incentive to an individual or group of employees, unless there is no official at a higher level in the agency.

(2) The higher level approval required by paragraph (b)(1) of this section is not needed when approving coverage of individual employees under a previously approved group retention incentive authorization.

(c) Unless the head of the agency determines otherwise, an agency retention incentive plan must apply uniformly across the agency.

§ 575.308 Approval criteria and written determination.

(a) An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may approve a retention incentive for an individual employee or group or category of employees using the approval criteria in § 575.306.

(b) For each determination to pay a retention incentive under this subpart, an agency must document in writing—

(1) The basis for determining that the unusually high or unique qualifications of the employee (or group of employees) or a special need of the agency for the employee’s (or group of employees’) services makes it essential to retain the employee(s);

(2) The basis for determining that the employee (or a significant number of employees in a group) would be likely to leave the Federal service in the absence of a retention incentive; and

(3) The basis for establishing the amount and timing of the approved retention incentive payment and the length of the required service period.

§ 575.309 Payment of retention incentives.

(a) An authorized agency official must determine the criteria for determining the amount of a retention incentive. An agency must establish a single retention incentive rate for each individual or group of employees that